IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 754 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT TRACTOR CORPORATION
Versus
SHASMUKHBHAI DALSUKHBHAI SHAH

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Appearance :
MR NANDISH CHUDGAR of NANAVATI ASSOCIATES for Petitioner.
SHRI AK MAVLANKAR OF GIRISH PATEL ASSOC for Respondent.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 08/08/2007

ORAL JUDGMENT

M/s. Gujarat Tractor Corporation, Vishwamitri Road,

Baroda being aggrieved by the award dated 20.08.98 passed by Presiding Officer, Labour Court, Baroda in Reference No. 134 of 1992 is before this Court with a submission that the learned Labour Court was unjustified in directing reinstatement of the respondent workman.

The short facts necessary for disposal of the present writ application are that the respondent, a Mechanical Engineer, was appointed on 15.01.79 in Machine Shop Department. On 23.06.91, he was transferred from Machine Shop Department to Assembly Shop. The allegations are that the workman made certain representations and did not report on duty. The respondent thereafter raised a grievance in relation to non-payment of salary. The petitioner, vide their letter dated 19.07.91 informed the workman that he was not reporting for duty and had not drawn salaries on the due dates. They again asked him to report for work. The respondent workman, according to the petitioner, informed that he would resume duties but he did not resume the duty. It appears that thereafter the workman made an application for Reference. The matter was referred to the Labour Court, and the Labour Court made such an award.

Mr. Chudgar, learned counsel for the petitioner submits that the evidence available on the record would show that the petitioner never stopped the respondent workman from coming to the workplace and that they never terminated him. He also submitted that even before this Court, the petitioner had clearly stated that they were ready and willing to reinstate the respondent provided he was ready and willing to go to the transferred place.

Referring to the interim order made by this Court, it was submitted that despite orders of this Court, the workman did not report on duty.

Shri A.K. Mavlankar, learned counsel for the respondent on the other hand submitted that after service of the notices, the respondent went to join the duties but he was not allowed to resume the duties and was asked to go to the place of transfer. It was submitted by him that the respondent workman being a Mechanical Engineer, cannot be transferred to the Assembly Shop and his representations were not decided and as he was not allowed to work in the Workshop, it would be a case of retrenchment without observing section 25.F of the Industrial Disputes Act.

The learned court below, after hearing the parties, has observed that the petitioner had issued the order of transfer but the respondent workman did not report at the place of transfer. The court has also observed that the workman being in continuous service, could not be stopped from working and he cannot be removed except in accordance with section 25.F of the Industrial Disputes Act.

In the opinion of this Court, the court below was not absolutely unjustified in directing reinstatement of the respondent workman. The question still would be: whether the respondent would be entitled to wages under section 17.B after filing of this petition or at least from the date of the interim order granted by this Court? From the order made by this Court, it would appear that the respondent was required to report at the place of

transfer, i.e. Assembly Shop but the respondent did not report on duty. Taking into consideration the totality of the circumstances, I am of the considered opinion that in view of certain lapses on the part of the respondent workman, he would not be entitled to last drawn salary from the date of the award till date, but would be entitled to 50% of the last drawn salary. The respondent may report on duty on any date within four weeks from today. If the respondent reports on duty for his reinstatement, then he would be allowed to join. If the petitioner issues any order of transfer, then in accordance with the undertaking given by the learned counsel for the respondent, the respondent shall immediately join at the place of transfer.

The petition is disposed of in the terms aforesaid. Rule is made absolute accordingly. No costs.

[R.S.GARG, J.]

Mathew